



March 25, 2005

ENGROSSED SENATE BILL No. 329

DIGEST OF SB 329 (Updated March 24, 2005 10:05 am - DI 113)

Citations Affected: IC 6-9; noncode.

Synopsis: Food and beverage taxes. Extends until December 31, 2015 (instead of December 31, 2004), Henry County's authority to pay for capital improvements with food and beverage tax revenues or to issue bonds or enter into leases or other obligations payable from food and beverage tax revenues. Provides that a member of the capital improvements committee may be reappointed upon the expiration of the member's term (current law requires the member to be reappointed). Specifies that the county may use the food and beverage tax revenues on a pay-as-you-go basis to undertake capital improvements and may pledge other available revenues to the payment of bonds payable from the food and beverage tax. Provides that the bonds may be issued for a term of not more than 20 years, with the term including any refunding bonds. Removes provisions abolishing the capital improvements committee and county food and beverage tax council in Henry County. Terminates food and beverage taxes under IC 6-9-25 in Brownsburg, Mooresville, Plainfield, Shipshewana, Avon, Martinsville, Henry County, Monroe County, and Wayne County two years after the retirement of debt financed by the food and beverage taxes. Authorizes the following to adopt an ordinance to impose a food and beverage tax: (1) The town of Avon. (2) Martinsville. (3) Wayne County and the cities and towns located in Wayne County (under new IC 6-9-35). (4) Monroe County (under new IC 6-9-36).

Effective: December 31, 2004 (retroactive); upon passage; July 1, 2005.

Gard

(HOUSE SPONSORS — SAUNDERS, PFLUM)

January 6, 2005, read first time and referred to Committee on Tax and Fiscal Policy.
January 18, 2005, reported favorably — Do Pass.
January 31, 2005, read second time, amended, ordered engrossed.
February 1, 2005, engrossed.
February 7, 2005, read third time, passed. Yeas 46, nays 0.

HOUSE ACTION

March 8, 2005, read first time and referred to Committee on Ways and Means.
March 24, 2005, amended, reported — Do Pass.

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March 25, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 329

A BILL FOR AN ACT to amend the Indiana Code concerning
taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-9-25-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE DECEMBER 31, 2004 (RETROACTIVE)]: Sec. 1. (a)
3 This chapter applies to a county having a population of more than
4 forty-seven thousand (47,000) but less than fifty thousand (50,000).

5 (b) The county described in subsection (a) is unique because:

6 (1) governmental entities and nonprofit organizations in the
7 county have successfully undertaken cooperative efforts to
8 promote tourism and economic development; and

9 (2) several unique tourist attractions are located in the county,
10 including:

11 (A) the Indiana basketball hall of fame;

12 (B) the Wilbur Wright birthplace memorial; and

13 (C) a historic gymnasium.

14 (c) The presence of these unique attractions in the county has:

15 (1) increased the number of visitors to the county;

16 (2) generated increased sales at restaurants and other retail
17 establishments selling food in the county; and

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(3) placed increased demands on all local governments for services needed to support tourism and economic development in the county.

(d) The use of food and beverage tax revenues arising in part from the presence of the attractions identified in subsection (b)(2) to support tourism and economic development in the county permits governmental units in the county to diversify the revenue sources for which local government improvements and services are funded.

SECTION 2. IC 6-9-25-9.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE DECEMBER 31, 2004 (RETROACTIVE)]:
Sec. 9.5. (a) This section applies to revenues from the county food and beverage tax received by the county after June 30, 1994.

(b) Money in the fund established under section 8 of this chapter shall be used by the county for the financing, construction, renovation, improvement, equipping, operation, or maintenance of the following capital ~~expenditures~~ **improvements**:

- (1) Sanitary sewers or wastewater treatment facilities that serve economic development purposes.
- (2) Drainage or flood control facilities that serve economic development purposes.
- (3) Road improvements used on an access road for an industrial park that serve economic development purposes.
- (4) A covered horse show arena.
- (5) A historic birthplace memorial.
- (6) A historic gymnasium and community center in a town in the county with a population greater than two thousand (2,000) but less than two thousand four hundred (2,400).
- (7) Main street renovation and picnic and park areas in a town in the county with a population greater than two thousand (2,000) but less than two thousand four hundred (2,400).
- (8) A community park and cultural center.
- (9) Projects for which the county decides after July 1, 1994, to:
 - (A) **expend money in the fund established under section 8 of this chapter; or**
 - (B) issue bonds or other obligations or enter into leases under section 11.5 of this chapter;
 after the projects described in subdivisions (1) through (8) have been funded.
- (10) An ambulance.

Money in the fund may not be used for the operating costs of any of the permissible projects listed in this section. In addition, the county may

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not ~~initiate a project~~ **issue bonds or enter into leases or other obligations** under this chapter after December 31, ~~2004~~ **2015**.

(c) The county capital improvements committee is established to make recommendations to the county fiscal body concerning the use of money in the fund established under section 8 of this chapter. The capital improvements committee consists of the following members:

(1) One (1) resident of the county representing each of the three (3) commissioner districts, appointed by the county executive. Not more than two (2) of the members appointed under this subdivision may be from the same political party.

(2) Two (2) residents of the county, appointed by the county fiscal body. The two (2) appointees may not be from the same political party. One (1) appointee under this subdivision must be a resident of a town in the county with a population greater than two thousand (2,000) but less than two thousand four hundred (2,400). One (1) appointee under this subdivision must be a resident of a town in the county with a population greater than two thousand four hundred (2,400).

(3) Two (2) residents of the largest city in the county, appointed by the municipal executive. The two (2) appointees under this subdivision may not be from the same political party. One (1) appointee must be interested in economic development.

(4) Two (2) residents of the largest city in the county, appointed by the municipal fiscal body. The two (2) appointees under this subdivision may not be from the same political party. One (1) appointee must be interested in tourism.

(d) Except as provided in subsection (e), the term of a member appointed to the capital improvements committee under subsection (c) is four (4) years.

(e) The initial terms of office for the members appointed to the county capital improvements committee under subsection (c) are as follows:

(1) Of the members appointed under subsection (c)(1), one (1) member shall be appointed for a term of two (2) years, one (1) member shall be appointed for three (3) years, and one (1) member shall be appointed for four (4) years.

(2) Of the members appointed under subsection (c)(2), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

(3) Of the members appointed under subsection (c)(3), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

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(4) Of the members appointed under subsection (c)(4), one (1) member shall be appointed for three (3) years and one (1) member shall be appointed for four (4) years.

(f) At the expiration of a term under subsection (e), the member whose term expired ~~shall~~ **may** be reappointed to the county capital improvements committee to fill the vacancy caused by the expiration.

~~(g) The capital improvements committee is abolished on January 1, 2005.~~

SECTION 3. IC 6-9-25-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE DECEMBER 31, 2004 (RETROACTIVE)]:

Sec. 10.5. (a) The county food and beverage tax council is established in the county. The membership of the county food and beverage tax council consists of the fiscal body of the county and the fiscal body of each municipality that lies either partly or entirely within the county.

(b) The county food and beverage tax council has a total of one hundred (100) votes. Every member of the county food and beverage tax council is allocated a percentage of the total one hundred (100) votes that may be cast. The percentage that a municipality in the county is allocated for a year equals the same percentage that the population of the municipality bears to the population of the county. The percentage that the county is allocated for a year equals the same percentage that the population of all areas of the county not located in a municipality bears to the population of the county. In the case of a municipality that lies partly within the county, the allocation shall be based on the population of that portion of the municipality that lies within the county.

(c) Before January 2 of each year, the county auditor shall certify to each member of the food and beverage tax council the number of votes, rounded to the nearest one-hundredth (0.01), the member has for that year.

(d) The food and beverage tax imposed under this chapter ~~remains in effect until the county food and beverage tax council adopts an ordinance to rescind the tax; terminates two (2) years after the retirement of debt that was incurred under this chapter.~~

(e) Subject to subsection (f), the county food and beverage tax council may adopt an ordinance to rescind the tax imposed under this chapter. An ordinance to rescind the food and beverage tax takes effect December 31 of the year in which the ordinance is adopted.

(f) The county food and beverage tax council may not rescind the food and beverage tax if there are bonds outstanding or leases or other obligations payable under this chapter.

~~(g) The county food and beverage tax council is abolished on~~

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January 1, 2005.

SECTION 4. IC 6-9-25-11.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE DECEMBER 31, 2004 (RETROACTIVE)]:

Sec. 11.5. (a) Until January 1, 2005, 2016, the county may:

(1) use money in the fund established under section 8 of this chapter to pay all or part of the costs associated with the facilities described in section 9.5 of this chapter;

(2) issue bonds, enter into leases, or incur other obligations to pay any costs associated with the facilities described in section 9.5 of this chapter;

(2) (3) reimburse the county or any nonprofit corporation for any money advanced to pay those costs; or

(3) (4) refund bonds issued or other obligations incurred under this chapter.

(b) Bonds or other obligations issued under this section:

(1) are payable solely from money provided in this chapter, any other revenues available to the county, or any combination of these sources, in accordance with a pledge made under IC 5-1-14-4;

(2) must be issued in the manner prescribed by IC 36-2-6-18 through IC 36-2-6-20; and

(3) may, in the discretion of the county, be sold at a negotiated sale at a price to be determined by the county or in accordance with IC 5-1-11 and IC 5-3-1; and

(4) may be issued for a term not to exceed twenty (20) years, such term to include any refunding bonds issued to refund bonds originally issued under this section.

(c) Leases entered into under this section:

(1) may be for a term not to exceed fifty (50) years;

(2) may provide for payments from revenues under this chapter, any other revenues available to the county, or any combination of these sources;

(3) may provide that payments by the county to the lessor are required only to the extent and only for the time that the lessor is able to provide the leased facilities in accordance with the lease;

(4) must be based upon the value of the facilities leased; and

(5) may not create a debt of the county for purposes of the Constitution of the State of Indiana.

(d) A lease may be entered into by the county executive only after a public hearing at which all interested parties are provided the opportunity to be heard. After the public hearing, the executive may approve the execution of the lease on behalf of the county only if the

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executive finds that the service to be provided throughout the life of the lease will serve the public purpose of the county and is in the best interests of its residents. A lease approved by the executive must also be approved by an ordinance of the county fiscal body.

(e) Upon execution of a lease under this section, and after approval of the lease by the county fiscal body, the county executive shall publish notice of the execution of the lease and the approval of the lease in accordance with IC 5-3-1.

(f) An action to contest the validity of bonds issued or leases entered into under this section must be brought within thirty (30) days after the adoption of a bond ordinance or notice of the execution and approval of the lease, as the case may be.

SECTION 5. IC 6-9-27-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. This chapter applies to the following:

(1) A town:

(A) located in a county having a population of more than sixty-five thousand (65,000) but less than seventy thousand (70,000); and

(B) having a population of more than nine thousand (9,000).

(2) A town:

(A) located in a county having a population of more than thirty-four thousand nine hundred (34,900) but less than thirty-four thousand nine hundred fifty (34,950); and

(B) having a population of less than one thousand (1,000).

(3) A town:

(A) located in a county having a population of more than one hundred thousand (100,000) but less than one hundred five thousand (105,000); and

(B) having a population of more than fifteen thousand (15,000).

(4) A town:

(A) located in a county having a population of more than one hundred thousand (100,000) but less than one hundred five thousand (105,000); and

(B) having a population of more than ten thousand (10,000) but less than fifteen thousand (15,000).

(5) A town:

(A) located in a county having a population of more than one hundred thousand (100,000) but less than one hundred five thousand (105,000); and

(B) having a population of more than five thousand (5,000)

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but less than six thousand three hundred (6,300).

(6) A city having a population of more than eleven thousand five hundred (11,500) but less than eleven thousand seven hundred forty (11,740).

SECTION 6. IC 6-9-27-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The fiscal body of the ~~town~~ **municipality** may adopt an ordinance to impose an excise tax, known as the ~~town~~ **municipal** food and beverage tax, on transactions described in section 4 of this chapter.

(b) If a fiscal body adopts an ordinance under subsection (a), the fiscal body shall immediately send a certified copy of the ordinance to the department of state revenue.

(c) If a fiscal body adopts an ordinance under subsection (a), the ~~town~~ **municipal** food and beverage tax applies to transactions that occur after the last day of the month that succeeds the month in which the ordinance was adopted.

SECTION 7. IC 6-9-27-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to a transaction in which food or beverage is furnished, prepared, or served:

- (1) for consumption at a location or on equipment provided by a retail merchant;
- (2) in the **city or** town in which the tax is imposed; and
- (3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) food sold in a heated state or heated by a retail merchant;
- (3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or
- (4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

(c) The ~~town~~ **municipal** food and beverage tax does not apply to the

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furnishing, preparing, or serving of a food or beverage in a transaction that is exempt, or to the extent the transaction is exempt, from the state gross retail tax imposed by IC 6-2.5.

SECTION 8. IC 6-9-27-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. The ~~town~~ **municipal** food and beverage tax imposed on a food or beverage transaction described in section 4 of this chapter equals one percent (1%) of the gross retail income received by the merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

SECTION 9. IC 6-9-27-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. The amounts received from the tax imposed under this chapter shall be paid monthly by the treasurer of state to the **city or** town fiscal officer upon warrants issued by the auditor of state.

SECTION 10. IC 6-9-27-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) If a tax is imposed under section 3 of this chapter **by a town described in section 1 of this chapter**, the town fiscal officer shall establish a food and beverage tax receipts fund.

(b) The town fiscal officer shall deposit in this fund all amounts received under this chapter.

(c) Money earned from the investment of money in the fund becomes a part of the fund.

SECTION 11. IC 6-9-27-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 8.5. (a) If a tax is imposed under section 3 of this chapter by a city described in section 1(6) of this chapter, the city fiscal officer shall establish a food and beverage tax receipts fund.**

(b) The city fiscal officer shall deposit in this fund all amounts received under this chapter.

(c) Money earned from the investment of money in the fund becomes a part of the fund.

SECTION 12. IC 6-9-27-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) Except as provided in subsection (b), money in the fund **established under section 8 of this chapter** shall be used by the town for the financing, construction, operation, or maintenance of the following:

- (1) Sanitary sewers or wastewater treatment facilities.
- (2) Park or recreational facilities.
- (3) Drainage or flood control facilities.

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(4) Water treatment, storage, or distribution facilities.

(b) The fiscal body of the town may pledge money in the fund to pay bonds issued, loans obtained, and lease payments or other obligations incurred by or on behalf of the town or a special taxing district in the town to provide the facilities described in subsection (a).

(c) Subsection (b) applies only to bonds, loans, lease payments, or obligations that are issued, obtained, or incurred after the date on which the tax is imposed under section 3 of this chapter.

(d) A pledge under subsection (a) is enforceable under IC 5-1-14-4.

SECTION 13. IC 6-9-27-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 9.5. (a) A city shall use money in the fund established under section 8.5 of this chapter for only the following:**

(1) Renovating the city hall.

(2) Constructing new police or fire stations, or both.

(3) Improving the city's sanitary sewers or wastewater treatment facilities, or both.

(4) Improving the city's storm water drainage systems.

(5) Other projects involving the city's water system or protecting the city's well fields, as determined by the city fiscal body.

Money in the fund may not be used for the operating costs of a project. In addition, the city may not initiate a project under this chapter after December 31, 2010.

(b) The fiscal body of the city may pledge money in the fund to pay bonds issued, loans obtained, and lease payments or other obligations incurred by or on behalf of the city or a special taxing district in the city to provide the projects described in subsection (a).

(c) Subsection (b) applies only to bonds, loans, lease payments, or obligations that are issued, obtained, or incurred after the date on which the tax is imposed under section 3 of this chapter.

(d) A pledge under subsection (b) is enforceable under IC 5-1-14-4.

SECTION 14. IC 6-9-27-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. With respect to obligations for which a pledge has been made under ~~section~~ **sections 9(b) or 9.5(b)** of this chapter, the general assembly covenants with the holders of the obligations that this chapter will not be repealed or amended in a manner that will adversely affect the imposition or collection of the tax imposed under this chapter if the payment of any of the obligations is outstanding.

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SECTION 15. IC 6-9-27-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 11. A food and beverage tax imposed under this chapter terminates two (2) years after the retirement of debt that was incurred under this chapter.**

SECTION 16. IC 6-9-35 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 35. Food and Beverage Taxes in Wayne County

Sec. 1. This chapter applies to a county having a population of more than seventy-one thousand (71,000) but less than seventy-one thousand four hundred (71,400).

Sec. 2. Except as otherwise provided in this chapter, the definitions in IC 36-1-2 apply throughout this chapter.

Sec. 3. As used in this chapter, "beverage" includes an alcoholic beverage.

Sec. 4. As used in this chapter, "bonds" has the meaning set forth in IC 5-1-11-1.

Sec. 5. As used in this chapter, "department" means the department of state revenue.

Sec. 6. As used in this chapter, "economic development project" has the meaning set forth in IC 6-3.5-7-13.1.

Sec. 7. As used in this chapter, "food" includes any food product.

Sec. 8. As used in this chapter, "gross retail income" has the meaning set forth in IC 6-2.5-1-5.

Sec. 9. As used in this chapter, "obligations" has the meaning set forth in IC 5-1-3-1(b).

Sec. 10. As used in this chapter, "person" has the meaning set forth in IC 6-2.5-1-3.

Sec. 11. As used in this chapter, "retail merchant" has the meaning set forth in IC 6-2.5-1-8.

Sec. 12. As used in this chapter, "unit" means:

- (1) a county described in section 1 of this chapter; or**
- (2) a city or town located in the county described in section 1 of this chapter.**

Sec. 13. (a) After January 1 but before August 1, the fiscal body of a unit may adopt an ordinance to impose an excise tax known as the unit's food and beverage tax on transactions described in section 14 of this chapter. The fiscal body of a unit other than a county may not adopt an ordinance under this chapter until after July 31, 2006, unless the fiscal body of the county adopts a

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1 resolution to relinquish its exclusive authority to adopt an
 2 ordinance under this chapter before August 1, 2006. If a county
 3 fiscal body adopts a resolution under this subsection, the county
 4 fiscal body shall send a certified copy of the resolution to the
 5 executive of each city and town located in the county.

6 (b) Before a fiscal body may adopt an ordinance imposing a food
 7 and beverage tax, the fiscal body must hold a public hearing on the
 8 proposed ordinance, with notice of the time, date, and place of the
 9 public hearing given in accordance with IC 5-3-1.

10 (c) If the fiscal body of a county adopts an ordinance to impose
 11 a food and beverage tax under this chapter, the county executive
 12 must also adopt a substantially similar ordinance to impose the tax.

13 (d) If an ordinance is adopted under subsection (c), the county
 14 executive shall immediately send a certified copy of the ordinance
 15 to the department.

16 (e) If a unit other than a county adopts an ordinance under this
 17 section, the unit's executive shall immediately send a certified copy
 18 of the ordinance to the department.

19 Sec. 14. (a) Except as provided in subsection (c), a food and
 20 beverage tax imposed under section 13 of this chapter applies to
 21 any transaction in which food or a beverage is furnished, prepared,
 22 or served:

23 (1) for consumption at a location, or on equipment, provided
 24 by a retail merchant;

25 (2) in the unit in which the tax is imposed; and

26 (3) by the retail merchant for consideration.

27 If both a county and another unit located in the county impose a
 28 tax under this chapter, the tax imposed by the county does not
 29 apply within the territory of the other unit imposing the tax.

30 (b) Transactions described in subsection (a)(1) include
 31 transactions in which food or a beverage is:

32 (1) served by a retail merchant off the merchant's premises;

33 (2) sold by a retail merchant who ordinarily bags, wraps, or
 34 packages the food or beverage for immediate consumption on
 35 or near the retail merchant's premises, including food or
 36 beverages sold on a "take out" or "to go" basis; or

37 (3) sold by a street vendor.

38 (c) A food and beverage tax imposed under this chapter does not
 39 apply to the furnishing, preparing, or serving of any food or
 40 beverage in a transaction that is exempt, or to the extent the
 41 transaction is exempt, from the state gross retail tax imposed under
 42 IC 6-2.5.

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1 **Sec. 15.** The food and beverage tax imposed on a food or
 2 beverage transaction described in section 14 of this chapter may
 3 not exceed one percent (1%) of the gross retail income received by
 4 the retail merchant from the transaction. For purposes of this
 5 chapter, the gross retail income received by the retail merchant
 6 from such a transaction does not include the amount of tax
 7 imposed on the transaction under IC 6-2.5.

8 **Sec. 16.** If the food and beverage tax imposed in a unit is
 9 imposed at a rate lower than the rate permitted under section 15
 10 of this chapter, the unit's fiscal body may adopt an ordinance to
 11 increase the unit's food and beverage tax rate. The ordinance must
 12 be adopted after January 1 but before September 1 of a year. The
 13 fiscal body shall send a certified copy of the ordinance increasing
 14 the food and beverage tax rate to the department.

15 **Sec. 17.** (a) If no bonds, leases, obligations, or other evidences of
 16 indebtedness of a unit that are payable from a food and beverage
 17 tax imposed under this chapter are outstanding, the unit's fiscal
 18 body may adopt an ordinance to:

- 19 (1) reduce the unit's food and beverage tax rate; or
- 20 (2) repeal the unit's food and beverage tax.

21 (b) An ordinance described in subsection (a) must be adopted
 22 after January 1 but before September 1 of a year. The fiscal body
 23 shall send a certified copy of the ordinance adopted under this
 24 section to the department.

25 **Sec. 18.** If a fiscal body adopts an ordinance under this chapter,
 26 the ordinance takes effect January 1 of the year following the year
 27 in which the ordinance is adopted.

28 **Sec. 19.** A food and beverage tax imposed under this chapter
 29 shall be imposed, paid, and collected in the same manner that the
 30 state gross retail tax is imposed, paid, and collected under IC 6-2.5.
 31 However, the return that is filed for the payment of the tax may be
 32 made on a separate return or may be combined with the return
 33 filed for the payment of the state gross retail tax as prescribed by
 34 the department.

35 **Sec. 20.** (a) The department shall notify the county auditor of a
 36 county containing a unit that imposes a food and beverage tax
 37 under this chapter of the amount of tax paid in the unit.

38 (b) The amounts received from a food and beverage tax imposed
 39 under this chapter shall be paid monthly by the treasurer of state
 40 on warrants issued by the auditor of state to the county auditor of
 41 the county in which the unit that imposed the tax is located.

42 **Sec. 21.** A county auditor shall establish for each unit in the

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1 county that imposes a tax under this chapter a local food and
 2 beverage tax revenue fund into which all amounts received
 3 monthly from the treasurer of state under this chapter shall be
 4 deposited.

5 **Sec. 22.** Revenue derived from a tax imposed under this chapter
 6 may be treated by a unit as additional revenue for the purpose of
 7 fixing its budget for the budget year during which the revenues are
 8 to be distributed to the unit.

9 **Sec. 23.** A unit may use revenues from a tax imposed under this
 10 chapter for one (1) or more of the following purposes:

11 (1) To promote and encourage conventions, visitors, and
 12 tourism within the unit.

13 (2) To promote and encourage economic development within
 14 the unit.

15 (3) Paying debt service or lease rentals on:

16 (A) bonds;

17 (B) leases;

18 (C) obligations; or

19 (D) any other evidence of indebtedness of the unit;

20 for a project described in subdivisions (1) and (2).

21 **Sec. 24.** The department of local government finance may not
 22 reduce a unit's property tax levy by the amount of revenue
 23 received from a tax imposed under this chapter.

24 **Sec. 25. (a)** The food and beverage tax revenue committee is
 25 established to make recommendations concerning the use of money
 26 in the funds established under section 21 of this chapter. The
 27 committee consists of the following members:

28 (1) One (1) resident of the county representing each of the
 29 three (3) commissioner districts, appointed by the county
 30 executive. Not more than two (2) of the members appointed
 31 under this subdivision may be from the same political party.

32 (2) Two (2) residents of the county, appointed by the county
 33 fiscal body. The two (2) appointees may not be from the same
 34 political party.

35 (3) Two (2) residents of the largest city in the county,
 36 appointed by the city executive. The two (2) appointees under
 37 this subdivision may not be from the same political party. One
 38 (1) appointee must be interested in economic development.

39 (4) Two (2) residents of the largest city in the county,
 40 appointed by the city fiscal body. The two (2) appointees
 41 under this subdivision may not be from the same political
 42 party. One (1) appointee must be interested in tourism.

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(b) Except as provided in subsection (c), the term of a member appointed to the food and beverage tax revenue committee under this section is four (4) years.

(c) The initial terms of office for the members appointed to the food and beverage tax revenue committee under subsection (a) are as follows:

(1) Of the members appointed under subsection (a)(1), one (1) member shall be appointed for a term of two (2) years, one (1) member shall be appointed for three (3) years, and one (1) member shall be appointed for four (4) years.

(2) Of the members appointed under subsection (a)(2), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

(3) Of the members appointed under subsection (a)(3), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

(4) Of the members appointed under subsection (a)(4), one (1) member shall be appointed for three (3) years and one (1) member shall be appointed for four (4) years.

(d) At the expiration of a term under subsection (c), the member whose term expired shall be reappointed to the food and beverage tax revenue committee to fill the vacancy caused by the expiration.

(e) The food and beverage tax revenue committee is abolished on the date that the county fiscal body adopts a resolution abolishing the food and beverage tax revenue committee. A county fiscal body may adopt a resolution under this subsection if the county fiscal body determines that each unit in the county that had imposed a tax under this chapter has adopted an ordinance to rescind the tax.

Sec. 26. The general assembly covenants with each unit subject to this chapter and the purchasers and owners of bonds, leases, obligations, or any other evidences of indebtedness of the county payable from a tax imposed under this chapter that this chapter will not be repealed or amended in any manner that will adversely affect the imposition or collection of a tax imposed under this chapter so long as the principal, interest, or lease rentals due under those bonds, leases, obligations, or other evidences of indebtedness of a unit that are payable from a tax imposed under this chapter remain unpaid.

SECTION 17. IC 6-9-36 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

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Chapter 36. Monroe County Food and Beverage Tax

Sec. 1. This chapter applies to Monroe County.

Sec. 2. The definitions in IC 6-9-12-1 apply throughout this chapter.

Sec. 3. (a) The fiscal body of the county may adopt an ordinance to impose an excise tax, known as the county food and beverage tax, on those transactions described in section 4 of this chapter.

(b) If the fiscal body adopts an ordinance under subsection (a), it shall immediately send a certified copy of the ordinance to the commissioner of the department of state revenue.

(c) If the fiscal body adopts an ordinance under subsection (a), the county food and beverage tax applies to transactions that occur after the last day of the month that succeeds the month in which the ordinance is adopted.

(d) If the fiscal body adopts an ordinance under subsection (a), it may adopt an ordinance to allow every retail merchant to deduct and retain from the amount of those taxes otherwise required to be remitted under this chapter, if timely remitted, a retail merchant's collection allowance. The fiscal body shall state the amount of the allowance in the ordinance. An allowance authorized under this subsection is in addition to any allowance authorized under an ordinance adopted under section 6 or 7 of this chapter.

(e) The fiscal body may not adopt an ordinance under subsection (a) before January 1, 2006.

Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to any transaction in which food or beverage is furnished, prepared, or served:

- (1) for consumption at a location, or on equipment, provided by a retail merchant;**
- (2) in the county in which the tax is imposed; and**
- (3) by a retail merchant for consideration.**

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;**
- (2) food sold in a heated state or heated by a retail merchant;**
- (3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne**

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illnesses); or

(4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

(c) The county food and beverage tax does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent exempt, from the state gross retail tax imposed by IC 6-2.5.

Sec. 5. The county food and beverage tax imposed on a food or beverage transaction described in section 4 of this chapter equals one percent (1%) of the gross retail income received by the merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from such a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

Sec. 6. If an ordinance is not adopted under section 7 of this chapter, the tax that may be imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed for the payment of the tax under this chapter may be made separately or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the department of state revenue.

Sec. 7. (a) The county fiscal body may adopt an ordinance to require that the tax be reported on forms approved by the county treasurer and that the tax shall be paid monthly to the county treasurer. If such an ordinance is adopted, the tax shall be paid to the county treasurer not more than twenty (20) days after the end of the month the tax is collected. If such an ordinance is not adopted, the tax shall be imposed, paid, and collected in exactly the same manner as the state gross retail tax is imposed, paid, and collected pursuant to IC 6-2.5.

(b) If an ordinance is adopted under this section, all the provisions of IC 6-2.5 relating to rights, duties, liabilities, procedures, penalties, definitions, exemptions, and administration apply to the imposition and administration of the tax imposed under section 3 of this chapter, except to the extent those provisions are in conflict or inconsistent with the specific provisions of this chapter or the requirements of the county treasurer. Specifically and not in limitation of this subsection, the

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terms "person" and "gross income" shall have the same meaning in this section as set forth in IC 6-2.5, except that "person" shall not include state supported educational institutions. If the tax is paid to the department of state revenue, the returns to be filed for the payment of the tax under this section may be either a separate return or may be combined with the return filed for the payment of the state gross retail tax as the department of state revenue may by rule determine.

Sec. 8. If an ordinance is not adopted under section 9 of this chapter, the amounts received from the county food and beverage tax imposed under this chapter shall be paid monthly by the treasurer of state to the county treasurer upon warrants issued by the auditor of state.

Sec. 9. (a) If an ordinance is adopted under section 3 of this chapter, the county treasurer shall establish a food and beverage tax receipts fund.

(b) The county treasurer shall deposit in the fund county food and beverage tax revenue that the county treasurer receives.

(c) Any money earned from the investment of money in the fund becomes part of the fund.

(d) Money in the fund at the end of the county fiscal year does not revert to the county general fund.

Sec. 10. (a) If an ordinance is adopted under section 3 of this chapter, the fiscal officer of the city of Bloomington shall establish a food and beverage tax receipts fund.

(b) The fiscal officer shall deposit in the fund county food and beverage tax revenue that the fiscal officer receives.

(c) Any money earned from the investment of money in the fund becomes part of the fund.

(d) Money in the fund at the end of the city fiscal year does not revert to the city general fund.

Sec. 11. (a) Each month, the auditor of Monroe County shall distribute the county food and beverage tax revenue received by the county treasurer between the city of Bloomington and Monroe County in the same ratio that the population of the city of Bloomington bears to the population of Monroe County.

(b) Distribution of county food and beverage tax revenue to the city of Bloomington must be on warrants issued by the auditor of Monroe County.

Sec. 12. Monroe County's share of county food and beverage tax revenue deposited in the county food and beverage tax receipts fund may be used to only finance, construct, operate, and maintain

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one (1) or more of the following:

- (1) A convention center, conference center, or auditorium facility.
- (2) Public safety facilities or operations.
- (3) Parks and recreation facilities.
- (4) Tourism or economic development projects.
- (5) Parking facilities.

Sec. 13. Money deposited in the city food and beverage tax receipts fund may be used only to finance, construct, operate, and maintain one (1) or more of the following:

- (1) A convention center, conference center, or auditorium facility.
- (2) Parks and recreation facilities.
- (3) Tourism or economic development projects.
- (4) Parking facilities.
- (5) Public safety facilities or operations.

Sec. 14. (a) There is created a nine (9) member food and beverage tax authority to make recommendations to the county executive and the city executive concerning the use of money in the funds established under sections 9 and 10 of this chapter. The nine (9) members are appointed as follows:

(1) Two (2) members appointed by the executive of the largest municipality in the county. Not more than one (1) member appointed under this subdivision may be of the same political party. One (1) member appointed under this subdivision must represent the hospitality or restaurant industry.

(2) Two (2) members appointed by the city council of the largest municipality in the county. Not more than one (1) member appointed under this subdivision may be of the same political party. One (1) member appointed under this subdivision must represent the hospitality or restaurant industry.

(3) Three (3) members appointed by the county executive body. Not more than two (2) members appointed under this subdivision may be of the same political party. One (1) member appointed under this subdivision must represent the hospitality or restaurant industry.

(4) Two (2) members appointed by the county fiscal body. One (1) member appointed under this subdivision must be a resident of Ellettsville.

A member appointed under this subsection must reside in Monroe County.

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(b) The term of appointment on the authority is two (2) years. However, when the initial appointments are made, each appointing authority shall appoint one (1) member for a one (1) year term and the remaining members for two (2) year terms. Subsequent appointments are for two (2) year terms. A vacancy on the authority shall be filled for the unexpired term by the authority that made the prior appointment.

(c) The affirmative vote of at least five (5) members of the authority is required for the authority to take an action.

Sec. 15. (a) If no obligations are outstanding, the county fiscal body may adopt an ordinance to rescind the tax imposed under this chapter before December 1 in any year.

(b) An ordinance to rescind the food and beverage tax takes effect January 1 of the year immediately following the year in which the ordinance is adopted.

(c) If the county fiscal body adopts an ordinance under subsection (a), it shall immediately send a certified copy of the ordinance to the commissioner of the department of state revenue.

SECTION 18. [EFFECTIVE UPON PASSAGE] A large percentage of the land in the city of Bloomington and in Monroe County is not taxable because it is owned by the state or the federal government, which puts the city and the county at a disadvantage in their ability to fund projects. These special circumstances require legislation particular to the city and county.

SECTION 19. [EFFECTIVE JULY 1, 2005] (a) Notwithstanding any other law, a food and beverage tax imposed in Monroe County terminates two (2) years after the retirement of debt financed by the food and beverage tax.

(b) Notwithstanding any other law, a food and beverage tax imposed in Wayne County terminates two (2) years after the retirement of debt financed by the food and beverage tax.

SECTION 20. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 329, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 329 as introduced.)

KENLEY, Chairperson

Committee Vote: Yeas 10, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 329 be amended to read as follows:

Page 5, line 18, strike "and".

Page 5, line 21, delete "." and insert "; **and**".

Page 5, between lines 21 and 22, begin a new line block indented and insert:

"(4) may be issued for a term not to exceed twenty (20) years, such term to include any refunding bonds issued to refund bonds originally issued under this section."

(Reference is to SB 329 as printed January 19, 2005.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 329, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, strike line 7.

Page 4, line 8, delete "2016."

Page 4, line 31, strike "remains".

Page 4, strike lines 32 through 33 and insert **"terminates two (2) years after the retirement of debt that was incurred under this chapter."**

Page 4, line 34, after "(e)" insert **"Subject to subsection (f), the county food and beverage tax council may adopt an ordinance to rescind the tax imposed under this chapter."**

Page 4, strike line 39.

Page 4, line 40, strike "January 1,".

Page 4, line 40, delete "2016."

Page 6, between lines 9 and 10, begin a new paragraph and insert:
"SECTION 5. IC 6-9-27-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. This chapter applies to the following:

(1) A town:

(A) located in a county having a population of more than sixty-five thousand (65,000) but less than seventy thousand (70,000); and

(B) having a population of more than nine thousand (9,000).

(2) A town:

(A) located in a county having a population of more than thirty-four thousand nine hundred (34,900) but less than thirty-four thousand nine hundred fifty (34,950); and

(B) having a population of less than one thousand (1,000).

(3) A town:

(A) located in a county having a population of more than one hundred thousand (100,000) but less than one hundred five thousand (105,000); and

(B) having a population of more than fifteen thousand (15,000).

(4) A town:

(A) located in a county having a population of more than one hundred thousand (100,000) but less than one hundred five thousand (105,000); and

(B) having a population of more than ten thousand (10,000)

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but less than fifteen thousand (15,000).

(5) A town:

(A) located in a county having a population of more than one hundred thousand (100,000) but less than one hundred five thousand (105,000); and

(B) having a population of more than five thousand (5,000) but less than six thousand three hundred (6,300).

(6) A city having a population of more than eleven thousand five hundred (11,500) but less than eleven thousand seven hundred forty (11,740).

SECTION 6. IC 6-9-27-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The fiscal body of the ~~town~~ **municipality** may adopt an ordinance to impose an excise tax, known as the ~~town~~ **municipal** food and beverage tax, on transactions described in section 4 of this chapter.

(b) If a fiscal body adopts an ordinance under subsection (a), the fiscal body shall immediately send a certified copy of the ordinance to the department of state revenue.

(c) If a fiscal body adopts an ordinance under subsection (a), the ~~town~~ **municipal** food and beverage tax applies to transactions that occur after the last day of the month that succeeds the month in which the ordinance was adopted.

SECTION 7. IC 6-9-27-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to a transaction in which food or beverage is furnished, prepared, or served:

- (1) for consumption at a location or on equipment provided by a retail merchant;
- (2) in the **city or** town in which the tax is imposed; and
- (3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) food sold in a heated state or heated by a retail merchant;
- (3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses);

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or

(4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

(c) The ~~town~~ **municipal** food and beverage tax does not apply to the furnishing, preparing, or serving of a food or beverage in a transaction that is exempt, or to the extent the transaction is exempt, from the state gross retail tax imposed by IC 6-2.5.

SECTION 8. IC 6-9-27-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. The ~~town~~ **municipal** food and beverage tax imposed on a food or beverage transaction described in section 4 of this chapter equals one percent (1%) of the gross retail income received by the merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

SECTION 9. IC 6-9-27-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. The amounts received from the tax imposed under this chapter shall be paid monthly by the treasurer of state to the **city or** town fiscal officer upon warrants issued by the auditor of state.

SECTION 10. IC 6-9-27-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) If a tax is imposed under section 3 of this chapter **by a town described in section 1 of this chapter**, the town fiscal officer shall establish a food and beverage tax receipts fund.

(b) The town fiscal officer shall deposit in this fund all amounts received under this chapter.

(c) Money earned from the investment of money in the fund becomes a part of the fund.

SECTION 11. IC 6-9-27-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 8.5. (a) If a tax is imposed under section 3 of this chapter by a city described in section 1(6) of this chapter, the city fiscal officer shall establish a food and beverage tax receipts fund.**

(b) The city fiscal officer shall deposit in this fund all amounts received under this chapter.

(c) Money earned from the investment of money in the fund becomes a part of the fund.

SECTION 12. IC 6-9-27-9 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) Except as provided in subsection (b), money in the fund **established under section 8 of this chapter** shall be used by the town for the financing, construction, operation, or maintenance of the following:

- (1) Sanitary sewers or wastewater treatment facilities.
- (2) Park or recreational facilities.
- (3) Drainage or flood control facilities.
- (4) Water treatment, storage, or distribution facilities.

(b) The fiscal body of the town may pledge money in the fund to pay bonds issued, loans obtained, and lease payments or other obligations incurred by or on behalf of the town or a special taxing district in the town to provide the facilities described in subsection (a).

(c) Subsection (b) applies only to bonds, loans, lease payments, or obligations that are issued, obtained, or incurred after the date on which the tax is imposed under section 3 of this chapter.

(d) A pledge under subsection (a) is enforceable under IC 5-1-14-4.

SECTION 13. IC 6-9-27-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9.5. (a) **A city shall use money in the fund established under section 8.5 of this chapter for only the following:**

- (1) **Renovating the city hall.**
- (2) **Constructing new police or fire stations, or both.**
- (3) **Improving the city's sanitary sewers or wastewater treatment facilities, or both.**
- (4) **Improving the city's storm water drainage systems.**
- (5) **Other projects involving the city's water system or protecting the city's well fields, as determined by the city fiscal body.**

Money in the fund may not be used for the operating costs of a project. In addition, the city may not initiate a project under this chapter after December 31, 2010.

(b) The fiscal body of the city may pledge money in the fund to pay bonds issued, loans obtained, and lease payments or other obligations incurred by or on behalf of the city or a special taxing district in the city to provide the projects described in subsection (a).

(c) Subsection (b) applies only to bonds, loans, lease payments, or obligations that are issued, obtained, or incurred after the date on which the tax is imposed under section 3 of this chapter.

(d) A pledge under subsection (b) is enforceable under

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IC 5-1-14-4.

SECTION 14. IC 6-9-27-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. With respect to obligations for which a pledge has been made under ~~section~~ **sections 9(b) or 9.5(b)** of this chapter, the general assembly covenants with the holders of the obligations that this chapter will not be repealed or amended in a manner that will adversely affect the imposition or collection of the tax imposed under this chapter if the payment of any of the obligations is outstanding.

SECTION 15. IC 6-9-27-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 11. A food and beverage tax imposed under this chapter terminates two (2) years after the retirement of debt that was incurred under this chapter.**

SECTION 16. IC 6-9-35 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 35. Food and Beverage Taxes in Wayne County

Sec. 1. This chapter applies to a county having a population of more than seventy-one thousand (71,000) but less than seventy-one thousand four hundred (71,400).

Sec. 2. Except as otherwise provided in this chapter, the definitions in IC 36-1-2 apply throughout this chapter.

Sec. 3. As used in this chapter, "beverage" includes an alcoholic beverage.

Sec. 4. As used in this chapter, "bonds" has the meaning set forth in IC 5-1-11-1.

Sec. 5. As used in this chapter, "department" means the department of state revenue.

Sec. 6. As used in this chapter, "economic development project" has the meaning set forth in IC 6-3.5-7-13.1.

Sec. 7. As used in this chapter, "food" includes any food product.

Sec. 8. As used in this chapter, "gross retail income" has the meaning set forth in IC 6-2.5-1-5.

Sec. 9. As used in this chapter, "obligations" has the meaning set forth in IC 5-1-3-1(b).

Sec. 10. As used in this chapter, "person" has the meaning set forth in IC 6-2.5-1-3.

Sec. 11. As used in this chapter, "retail merchant" has the meaning set forth in IC 6-2.5-1-8.

Sec. 12. As used in this chapter, "unit" means:

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- (1) a county described in section 1 of this chapter; or
- (2) a city or town located in the county described in section 1 of this chapter.

Sec. 13. (a) After January 1 but before August 1, the fiscal body of a unit may adopt an ordinance to impose an excise tax known as the unit's food and beverage tax on transactions described in section 14 of this chapter. The fiscal body of a unit other than a county may not adopt an ordinance under this chapter until after July 31, 2006, unless the fiscal body of the county adopts a resolution to relinquish its exclusive authority to adopt an ordinance under this chapter before August 1, 2006. If a county fiscal body adopts a resolution under this subsection, the county fiscal body shall send a certified copy of the resolution to the executive of each city and town located in the county.

(b) Before a fiscal body may adopt an ordinance imposing a food and beverage tax, the fiscal body must hold a public hearing on the proposed ordinance, with notice of the time, date, and place of the public hearing given in accordance with IC 5-3-1.

(c) If the fiscal body of a county adopts an ordinance to impose a food and beverage tax under this chapter, the county executive must also adopt a substantially similar ordinance to impose the tax.

(d) If an ordinance is adopted under subsection (c), the county executive shall immediately send a certified copy of the ordinance to the department.

(e) If a unit other than a county adopts an ordinance under this section, the unit's executive shall immediately send a certified copy of the ordinance to the department.

Sec. 14. (a) Except as provided in subsection (c), a food and beverage tax imposed under section 13 of this chapter applies to any transaction in which food or a beverage is furnished, prepared, or served:

- (1) for consumption at a location, or on equipment, provided by a retail merchant;
- (2) in the unit in which the tax is imposed; and
- (3) by the retail merchant for consideration.

If both a county and another unit located in the county impose a tax under this chapter, the tax imposed by the county does not apply within the territory of the other unit imposing the tax.

(b) Transactions described in subsection (a)(1) include transactions in which food or a beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) sold by a retail merchant who ordinarily bags, wraps, or

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packages the food or beverage for immediate consumption on or near the retail merchant's premises, including food or beverages sold on a "take out" or "to go" basis; or
 (3) sold by a street vendor.

(c) A food and beverage tax imposed under this chapter does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent the transaction is exempt, from the state gross retail tax imposed under IC 6-2.5.

Sec. 15. The food and beverage tax imposed on a food or beverage transaction described in section 14 of this chapter may not exceed one percent (1%) of the gross retail income received by the retail merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from such a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

Sec. 16. If the food and beverage tax imposed in a unit is imposed at a rate lower than the rate permitted under section 15 of this chapter, the unit's fiscal body may adopt an ordinance to increase the unit's food and beverage tax rate. The ordinance must be adopted after January 1 but before September 1 of a year. The fiscal body shall send a certified copy of the ordinance increasing the food and beverage tax rate to the department.

Sec. 17. (a) If no bonds, leases, obligations, or other evidences of indebtedness of a unit that are payable from a food and beverage tax imposed under this chapter are outstanding, the unit's fiscal body may adopt an ordinance to:

- (1) reduce the unit's food and beverage tax rate; or
- (2) repeal the unit's food and beverage tax.

(b) An ordinance described in subsection (a) must be adopted after January 1 but before September 1 of a year. The fiscal body shall send a certified copy of the ordinance adopted under this section to the department.

Sec. 18. If a fiscal body adopts an ordinance under this chapter, the ordinance takes effect January 1 of the year following the year in which the ordinance is adopted.

Sec. 19. A food and beverage tax imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return that is filed for the payment of the tax may be made on a separate return or may be combined with the return filed for the payment of the state gross retail tax as prescribed by

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the department.

Sec. 20. (a) The department shall notify the county auditor of a county containing a unit that imposes a food and beverage tax under this chapter of the amount of tax paid in the unit.

(b) The amounts received from a food and beverage tax imposed under this chapter shall be paid monthly by the treasurer of state on warrants issued by the auditor of state to the county auditor of the county in which the unit that imposed the tax is located.

Sec. 21. A county auditor shall establish for each unit in the county that imposes a tax under this chapter a local food and beverage tax revenue fund into which all amounts received monthly from the treasurer of state under this chapter shall be deposited.

Sec. 22. Revenue derived from a tax imposed under this chapter may be treated by a unit as additional revenue for the purpose of fixing its budget for the budget year during which the revenues are to be distributed to the unit.

Sec. 23. A unit may use revenues from a tax imposed under this chapter for one (1) or more of the following purposes:

- (1)** To promote and encourage conventions, visitors, and tourism within the unit.
- (2)** To promote and encourage economic development within the unit.
- (3)** Paying debt service or lease rentals on:
 - (A)** bonds;
 - (B)** leases;
 - (C)** obligations; or
 - (D)** any other evidence of indebtedness of the unit;
 for a project described in subdivisions (1) and (2).

Sec. 24. The department of local government finance may not reduce a unit's property tax levy by the amount of revenue received from a tax imposed under this chapter.

Sec. 25. (a) The food and beverage tax revenue committee is established to make recommendations concerning the use of money in the funds established under section 21 of this chapter. The committee consists of the following members:

- (1)** One (1) resident of the county representing each of the three (3) commissioner districts, appointed by the county executive. Not more than two (2) of the members appointed under this subdivision may be from the same political party.
- (2)** Two (2) residents of the county, appointed by the county

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fiscal body. The two (2) appointees may not be from the same political party.

(3) Two (2) residents of the largest city in the county, appointed by the city executive. The two (2) appointees under this subdivision may not be from the same political party. One (1) appointee must be interested in economic development.

(4) Two (2) residents of the largest city in the county, appointed by the city fiscal body. The two (2) appointees under this subdivision may not be from the same political party. One (1) appointee must be interested in tourism.

(b) Except as provided in subsection (c), the term of a member appointed to the food and beverage tax revenue committee under this section is four (4) years.

(c) The initial terms of office for the members appointed to the food and beverage tax revenue committee under subsection (a) are as follows:

(1) Of the members appointed under subsection (a)(1), one (1) member shall be appointed for a term of two (2) years, one (1) member shall be appointed for three (3) years, and one (1) member shall be appointed for four (4) years.

(2) Of the members appointed under subsection (a)(2), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

(3) Of the members appointed under subsection (a)(3), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

(4) Of the members appointed under subsection (a)(4), one (1) member shall be appointed for three (3) years and one (1) member shall be appointed for four (4) years.

(d) At the expiration of a term under subsection (c), the member whose term expired shall be reappointed to the food and beverage tax revenue committee to fill the vacancy caused by the expiration.

(e) The food and beverage tax revenue committee is abolished on the date that the county fiscal body adopts a resolution abolishing the food and beverage tax revenue committee. A county fiscal body may adopt a resolution under this subsection if the county fiscal body determines that each unit in the county that had imposed a tax under this chapter has adopted an ordinance to rescind the tax.

Sec. 26. The general assembly covenants with each unit subject

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to this chapter and the purchasers and owners of bonds, leases, obligations, or any other evidences of indebtedness of the county payable from a tax imposed under this chapter that this chapter will not be repealed or amended in any manner that will adversely affect the imposition or collection of a tax imposed under this chapter so long as the principal, interest, or lease rentals due under those bonds, leases, obligations, or other evidences of indebtedness of a unit that are payable from a tax imposed under this chapter remain unpaid.

SECTION 17. IC 6-9-36 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 36. Monroe County Food and Beverage Tax

Sec. 1. This chapter applies to Monroe County.

Sec. 2. The definitions in IC 6-9-12-1 apply throughout this chapter.

Sec. 3. (a) The fiscal body of the county may adopt an ordinance to impose an excise tax, known as the county food and beverage tax, on those transactions described in section 4 of this chapter.

(b) If the fiscal body adopts an ordinance under subsection (a), it shall immediately send a certified copy of the ordinance to the commissioner of the department of state revenue.

(c) If the fiscal body adopts an ordinance under subsection (a), the county food and beverage tax applies to transactions that occur after the last day of the month that succeeds the month in which the ordinance is adopted.

(d) If the fiscal body adopts an ordinance under subsection (a), it may adopt an ordinance to allow every retail merchant to deduct and retain from the amount of those taxes otherwise required to be remitted under this chapter, if timely remitted, a retail merchant's collection allowance. The fiscal body shall state the amount of the allowance in the ordinance. An allowance authorized under this subsection is in addition to any allowance authorized under an ordinance adopted under section 6 or 7 of this chapter.

(e) The fiscal body may not adopt an ordinance under subsection (a) before January 1, 2006.

Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to any transaction in which food or beverage is furnished, prepared, or served:

(1) for consumption at a location, or on equipment, provided by a retail merchant;

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(2) in the county in which the tax is imposed; and

(3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

(1) served by a retail merchant off the merchant's premises;

(2) food sold in a heated state or heated by a retail merchant;

(3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or

(4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

(c) The county food and beverage tax does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent exempt, from the state gross retail tax imposed by IC 6-2.5.

Sec. 5. The county food and beverage tax imposed on a food or beverage transaction described in section 4 of this chapter equals one percent (1%) of the gross retail income received by the merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from such a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

Sec. 6. If an ordinance is not adopted under section 7 of this chapter, the tax that may be imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed for the payment of the tax under this chapter may be made separately or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the department of state revenue.

Sec. 7. (a) The county fiscal body may adopt an ordinance to require that the tax be reported on forms approved by the county treasurer and that the tax shall be paid monthly to the county treasurer. If such an ordinance is adopted, the tax shall be paid to

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the county treasurer not more than twenty (20) days after the end of the month the tax is collected. If such an ordinance is not adopted, the tax shall be imposed, paid, and collected in exactly the same manner as the state gross retail tax is imposed, paid, and collected pursuant to IC 6-2.5.

(b) If an ordinance is adopted under this section, all the provisions of IC 6-2.5 relating to rights, duties, liabilities, procedures, penalties, definitions, exemptions, and administration apply to the imposition and administration of the tax imposed under section 3 of this chapter, except to the extent those provisions are in conflict or inconsistent with the specific provisions of this chapter or the requirements of the county treasurer. Specifically and not in limitation of this subsection, the terms "person" and "gross income" shall have the same meaning in this section as set forth in IC 6-2.5, except that "person" shall not include state supported educational institutions. If the tax is paid to the department of state revenue, the returns to be filed for the payment of the tax under this section may be either a separate return or may be combined with the return filed for the payment of the state gross retail tax as the department of state revenue may by rule determine.

Sec. 8. If an ordinance is not adopted under section 9 of this chapter, the amounts received from the county food and beverage tax imposed under this chapter shall be paid monthly by the treasurer of state to the county treasurer upon warrants issued by the auditor of state.

Sec. 9. (a) If an ordinance is adopted under section 3 of this chapter, the county treasurer shall establish a food and beverage tax receipts fund.

(b) The county treasurer shall deposit in the fund county food and beverage tax revenue that the county treasurer receives.

(c) Any money earned from the investment of money in the fund becomes part of the fund.

(d) Money in the fund at the end of the county fiscal year does not revert to the county general fund.

Sec. 10. (a) If an ordinance is adopted under section 3 of this chapter, the fiscal officer of the city of Bloomington shall establish a food and beverage tax receipts fund.

(b) The fiscal officer shall deposit in the fund county food and beverage tax revenue that the fiscal officer receives.

(c) Any money earned from the investment of money in the fund becomes part of the fund.

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(d) Money in the fund at the end of the city fiscal year does not revert to the city general fund.

Sec. 11. (a) Each month, the auditor of Monroe County shall distribute the county food and beverage tax revenue received by the county treasurer between the city of Bloomington and Monroe County in the same ratio that the population of the city of Bloomington bears to the population of Monroe County.

(b) Distribution of county food and beverage tax revenue to the city of Bloomington must be on warrants issued by the auditor of Monroe County.

Sec. 12. Monroe County's share of county food and beverage tax revenue deposited in the county food and beverage tax receipts fund may be used to only finance, construct, operate, and maintain one (1) or more of the following:

- (1) A convention center, conference center, or auditorium facility.
- (2) Public safety facilities or operations.
- (3) Parks and recreation facilities.
- (4) Tourism or economic development projects.
- (5) Parking facilities.

Sec. 13. Money deposited in the city food and beverage tax receipts fund may be used only to finance, construct, operate, and maintain one (1) or more of the following:

- (1) A convention center, conference center, or auditorium facility.
- (2) Parks and recreation facilities.
- (3) Tourism or economic development projects.
- (4) Parking facilities.
- (5) Public safety facilities or operations.

Sec. 14. (a) There is created a nine (9) member food and beverage tax authority to make recommendations to the county executive and the city executive concerning the use of money in the funds established under sections 9 and 10 of this chapter. The nine (9) members are appointed as follows:

- (1) Two (2) members appointed by the executive of the largest municipality in the county. Not more than one (1) member appointed under this subdivision may be of the same political party. One (1) member appointed under this subdivision must represent the hospitality or restaurant industry.
- (2) Two (2) members appointed by the city council of the largest municipality in the county. Not more than one (1)

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member appointed under this subdivision may be of the same political party. One (1) member appointed under this subdivision must represent the hospitality or restaurant industry.

(3) Three (3) members appointed by the county executive body. Not more than two (2) members appointed under this subdivision may be of the same political party. One (1) member appointed under this subdivision must represent the hospitality or restaurant industry.

(4) Two (2) members appointed by the county fiscal body. One (1) member appointed under this subdivision must be a resident of Ellettsville.

A member appointed under this subsection must reside in Monroe County.

(b) The term of appointment on the authority is two (2) years. However, when the initial appointments are made, each appointing authority shall appoint one (1) member for a one (1) year term and the remaining members for two (2) year terms. Subsequent appointments are for two (2) year terms. A vacancy on the authority shall be filled for the unexpired term by the authority that made the prior appointment.

(c) The affirmative vote of at least five (5) members of the authority is required for the authority to take an action.

Sec. 15. (a) If no obligations are outstanding, the county fiscal body may adopt an ordinance to rescind the tax imposed under this chapter before December 1 in any year.

(b) An ordinance to rescind the food and beverage tax takes effect January 1 of the year immediately following the year in which the ordinance is adopted.

(c) If the county fiscal body adopts an ordinance under subsection (a), it shall immediately send a certified copy of the ordinance to the commissioner of the department of state revenue.

SECTION 18. [EFFECTIVE UPON PASSAGE] A large percentage of the land in the city of Bloomington and in Monroe County is not taxable because it is owned by the state or the federal government, which puts the city and the county at a disadvantage in their ability to fund projects. These special circumstances require legislation particular to the city and county.

SECTION 19. [EFFECTIVE JULY 1, 2005] (a) Notwithstanding any other law, a food and beverage tax imposed in Monroe County terminates two (2) years after the retirement of debt financed by the food and beverage tax.

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(b) Notwithstanding any other law, a food and beverage tax imposed in Wayne County terminates two (2) years after the retirement of debt financed by the food and beverage tax."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 329 as reprinted February 1, 2005.)

ESPICH, Chair

Committee Vote: yeas 17, nays 4.

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